

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ANTHONY O. LONGSTREET, SR.,
Plaintiff,
v.
DAVID P. WELLS, *et al.*,
Defendants.

Case No. 3:22-cv-00065-MMD-CLB
ORDER

Pro se Plaintiff Anthony O. Longstreet, Sr., who was incarcerated in the custody of the Nevada Department of Corrections, brings this action against Defendants David P. Wells, Hayden Solis, P. Salinas, P. Aguilar, and Detective Knickerbocker under 42 U.S.C. § 1983. On July 11, 2022, this Court ordered Longstreet to file a second amended complaint by August 10, 2022. (ECF No. 7.) The Court warned Longstreet that the action could be dismissed if he failed to file a second amended complaint by the deadline. (*Id.* at 12.) That deadline has expired and Longstreet did not file a second amended complaint, move for an extension, or otherwise respond.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of L.A.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s

1 interest in expeditious resolution of litigation; (2) the Court's need to manage its docket;
2 (3) the risk of prejudice to Defendants; (4) the public policy favoring disposition of cases
3 on their merits; and (5) the availability of less drastic alternatives. See *In re*
4 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
5 *Malone*, 833 F.2d at 130).

6 The first two factors, the public's interest in expeditiously resolving this litigation
7 and the Court's interest in managing its docket, weigh in favor of dismissal of Longstreet's
8 claims. The third factor, risk of prejudice to Defendants, also weighs in favor of dismissal
9 because a presumption of injury arises from the occurrence of unreasonable delay in filing
10 a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542
11 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
12 cases on their merits—is greatly outweighed by the factors favoring dismissal.

13 The fifth factor requires the Court to consider whether less drastic alternatives can
14 be used to correct the party's failure that brought about the Court's need to consider
15 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
16 that considering less drastic alternatives *before* the party has disobeyed a court order
17 does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 n.4 (9th Cir.
18 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that “implicitly
19 accepted pursuit of last drastic alternatives prior to disobedience of the court's order as
20 satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled with the
21 warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*). Courts “need
22 not exhaust every sanction short of dismissal before finally dismissing a case, but must
23 explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779 F.2d 1421,
24 1424 (9th Cir. 1986).

25 Because this action cannot realistically proceed until and unless Longstreet files a
26 second amended complaint, the only alternative is to enter a second order setting another
27 deadline. But the reality of repeating an ignored order is that it often only delays the
28 inevitable and squanders the Court's finite resources. The circumstances here do not

1 indicate that this case will be an exception. Although the address on record suggests that
2 Longstreet may have difficulties receiving mail, it is nonetheless Longstreet's
3 responsibility to update his address and contact information so he can be notified of
4 updates in his case. See LR IA 3-1 (requiring *pro se* litigants to keep the Court apprised
5 of their address, or face dismissal). Longstreet has not updated his address since May
6 2022 or otherwise indicated to the Court that he needs additional time. (ECF No. 6.)
7 Moreover, dismissal is without prejudice so Longstreet may refile his lawsuit. Given these
8 circumstances, setting another deadline is not a meaningful alternative. Thus, the fifth
9 factor also favors dismissal.

10 Having thoroughly considered these dismissal factors, the Court finds that they
11 weigh in favor of dismissal.

12 It is therefore ordered that this action is dismissed without prejudice based on
13 Longstreet's failure to file a second amended complaint in compliance with this Court's
14 July 11, 2022, order.

15 The Clerk of Court is directed to enter judgment accordingly and close this case.
16 No other documents may be filed in this now-closed case. If Longstreet wishes to pursue
17 his claims, he must file a complaint in a new case.

18 DATED THIS 12th Day of August 2022.

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22 MIRANDA M. DU
23 CHIEF UNITED STATES DISTRICT JUDGE
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